IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7116 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTILAL ISHWARBHAI PATEL - Petitioner(s)
Versus
MS UNIVERSITY & 2 - Respondent(s)

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Appearance :

MR NILESH A PANDYA for Petitioner(s) : 1,
MR NV ANJARIA for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/04/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner who was working with the respondent No.1 has prayed for an

appropriate writ, direction and/or order directing the respondents to consider the petitioner's case under Pension Scheme and further directed the respondents to give and pay pensionary benefits to the petitioner forthwith.

2. Learned advocate appearing on behalf of the petitioner has submitted that the petitioner was firstly appointed on 2-7-1956 and for the period from 2-7-1956 to 31-5-1957, the petitioner worked as a Mistry in the construction department of MS University, Vadodara and from 1-6-1967 to 31-12-1969, the petitioner again worked in the same department and from 1-1-1970 to 31-12-1970, the petitioner was not given the work and accordingly artificial break was given to the petitioner. It is the case on behalf of the petitioner that from 1-1-1971 to 28-2-1982, the petitioner worked as a Librarian in respondent No.2 Library and on 28-2-1982 the petitioner was permitted to retire. However, subsequently his services were extended by the MS University from 29-2-1982 to 29-2-1984. It is the case on behalf of the petitioner that as per the option given by the University, the petitioner also gave his option as well as necessary forms for getting pension benefits under the Pension Benefit Scheme. However, the petitioner has not been paid the pension. It is the case on behalf of the petitioner that on the date of retirement i.e. on 29-2-1982, the petitioner was paid amount of gratuity and provident fund as admissible under the relevant statute No.209 and in spite of

this, the petitioner is not given any option of pension benefit scheme as required under statute No.209(b). It is submitted on behalf of the petitioner that other similarly situated employees of the respondent No.1 University preferred Special Civil Application No.6045 of 1992 and other Special Civil Applications for an appropriate order directing the respondents to grant the benefit of pension scheme and permit them to exercise the option which came up for hearing before the learned single Judge (Coram: R.K. Abichandani, J, as he then was) who by judgment and order dated 19-7-1996 has been pleased to allow the aforesaid Special Civil Applications by directing the respondents to consider those Special Civil Applications as representations and the respondents were directed to take a decision in the matter for modifying cut off date from 1-4-1982 to 1-1-1973 in light of the decision in Gujarat State Retired Professors' Association V. State of Gujarat reported in 32(1) GLR 168. It is submitted that pursuant to the said direction, the State Government has subsequently considered the said representations and has granted the benefit of pension to those employees who have retired even between 1-1-1973 and 1-4-1982. It is the case on behalf of the petitioner that the petitioner is similarly situated and therefore, the petitioner should be granted the same benefit which is given to the petitioner of Special Civil Application No.6045 of 1992 and other Special Civil Applications.

3. Shri Anjaria, learned advocate appearing on behalf of the respondent No.1 is absent. Shri DA Desai, learned AGP on instruction from the office of the respondent No.3 is not in a position to dispute that the case of the petitioner is not similarly to that of petitioners of Special Civil Application No.6045 of 1992 and other Special Civil Applications. He has also not disputed that those petitioners of Special Civil Application No.6045 of 1992 and other Special Civil Applications are now given the benefit of pension scheme.

4. Under the circumstances, the petitioner is also entitled to the same benefit of pension scheme which is given to the petitioner of Special Civil Application No.6045 of 1992 and other Special Civil Applications.

5. For the reasons stated above, the petition succeeds. The respondents are directed to give the benefit of pension scheme to the petitioner as is given to the petitioners of Special Civil Application No.6045 of 1992 and other Special Civil Applications and grant the consequential benefits to the petitioner and after proper calculation and the adjustment of the amount if any received by the petitioner which he is required to refund, within a period of four months from the date of receipt of this order. Rule made absolute to the aforesaid extent. No costs.

(M.R. SHAH, J.)

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